

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 18, 2007

**STATE OF TENNESSEE v. DAVID WAYNE JONES AND HELEN O.  
BONNER**

**Appeal from the Circuit Court for Warren County  
No. F-10260     Larry B. Stanley, Jr., Judge**

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**No. M2007-01163-CCA-R3-CD - Filed March 28, 2008**

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The defendants, David Wayne Jones and Helen O. Bonner, entered pleas of guilty to one count of the attempted manufacture of methamphetamine. *See* T.C.A. § 39-17-417(a)(1), -12-101 (2003). Pursuant to Rule 37 of the Tennessee Rules of Criminal Procedure, each of the defendants reserved a certified question for appeal: “Did the Search Warrant and accompanying Affidavit that led to the search of the Defendant’s residence violate the United States and Tennessee Constitutions, as well as Tennessee Rule of Criminal Procedure 41(c), so as to render all of the evidence seized pursuant thereto, illegal and inadmissible?”. Because the warrant does not comply with the requirements of Rule 41, the judgment of the trial court is reversed, and the charges are dismissed.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Reversed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

L. Scott Grissom, McMinnville, Tennessee, for the appellant, David Wayne Jones; and Phillip T. Clemons, McMinnville, Tennessee, for the appellant, Helen O. Bonner.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Dale Potter, District Attorney General; and Lillian Ann Sells, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On May 6, 2005, a Warren County grand jury indicted the defendants with a single count of attempted manufacture of methamphetamine, a Class D felony. The indictment arose as a result of a March 3, 2005 search conducted on the residence shared by the defendants. The defendants filed separate motions to suppress the evidence seized during the search, alleging that the search warrant was insufficient because, although the time 11:25 was stated, there was no indication of whether the warrant was issued at 11:25 a.m. or 11:25 p.m. Each complained that this omission

rendered the search illegal under the terms of Rule 41(c) of the Tennessee Rules of Criminal Procedure.

A hearing on the defendants' motions was held on April 11, 2007. The trial court initially concluded that the face of the search warrant did not conclusively establish that it had been issued before being executed: "On its face, you can't show that [the warrant] was . . . issued before it was executed. You can't say that from the face because it doesn't show AM or PM, and the return doesn't show AM or PM on the same day." In spite of its initial impression, the trial court permitted the State to introduce the testimony of the officer who obtained and executed the search warrant.

Officer Kevin Murphy testified that on the morning of March 2, 2005, while "executing a state warrant" at the residence of the defendant Jones's father, the officers gathered information that provided them with probable cause to obtain a search warrant for the defendants' residence. Officer Murphy stated that "[i]t took several hours" to prepare the necessary paper work and that "[i]t was 11:25 p.m." when he presented the warrant to the judicial commissioner. Immediately after the warrant was issued, Officer Murphy, accompanied by other officers, went to the defendants' residence to execute the warrant. Officer Murphy recalled that the search began at 12:15 a.m. on March 3, 2005. The officer's return on the warrant is somewhat equivocal as to the date of execution; the date in March 2005 may have originally read "2nd" and may have been changed to "3rd." Officer Murphy attributed the discrepancy on the search warrant return to the fact that the warrant was issued shortly after midnight and to the fact that he "had worked about twenty-four (24) hours that day."

On the basis of this evidence, the trial court denied the defendants' motions to suppress. The trial court concluded that "the time being omitted from the search warrant was not problematic in **this** instance because the search warrant was executed on March 3, 2005[,] after being signed on March 2, 2005."

Following the trial court's ruling, each of the defendants pleaded guilty to a single count of attempt to manufacture methamphetamine. Pursuant to a plea agreement with the State, each of the defendants received a three-year sentence to be served as 90 days' incarceration followed by probation. In addition, each of the defendants reserved a certified question for appeal. The judgment forms explicitly state that a question has been reserved and incorporate by reference the order stating the question. Both the State and the trial court agreed that the certified question is dispositive of the case. Because the defendants have complied with the requirements for the reservation of a certified question, *see* Tenn. R. Crim. P. 37(b)(2)(A); *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988), we will address the issue presented.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000); *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, questions of credibility, the weight and value of the evidence, and the resolution of conflicting evidence are matters entrusted to the trial judge, and this court must uphold a trial court's findings of fact unless the evidence in the record

preponderates against them. *Odom*, 928 S.W.2d at 23; *see also* Tenn. R. App. P. 13(d). The application of the law to the facts, however, is reviewed de novo on appeal. *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998). We review the issues in the present appeal with these standards in mind.

In this case, the search warrant provides, “I hereby certify that I signed and delivered this Search Warrant for the execution to **Kevin Murphy** at 11 O’clock 25 m. on this the 2 day of March, 2005.” Clearly, the blank containing the “25” was intended to contain either an “a” or “p” to indicate the time of day that the warrant was issued. The question then, is what effect this omission has on the validity of the search warrant. The defendant contends that the omission of the a.m. or p.m. designation is the same as the omission altogether of a time of issuance. The State contends that the error does not render the search warrant invalid and that because the proof established that the warrant was issued prior to its execution, the defendants are not entitled to relief.

On a constitutional level, both the state and federal constitutions offer protection from unreasonable searches and seizures. *See* U.S. Const. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .”); Tenn. Const. art. I, § 7 (“That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures . . . .”). The right to be free from unreasonable searches and seizures means that, as a general rule, a warrant is required to execute the arrest of a person or the search of his premises. *See Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *Katz v. United States*, 389 U.S. 347, 357 (1967); *see also State v. Berrios*, 235 S.W.3d 99, 104 (Tenn. 2007); *State v. Bridges*, 963 S.W.2d 487, 490 (Tenn. 1997). Statutorily, “[a] search warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, any constable, or any peace officer of the county, commanding the sheriff, constable or peace officer to search for personal property, and bring it before the magistrate.” T.C.A. § 40-6-101 (2006). In addition to the constitutional and statutory requirement that a warrant be issued only upon a finding of probable cause, certain procedural requirements must be met to establish the validity of a search warrant. Those requirements are contained in Rule 41 of the Tennessee Rules of Criminal Procedure, which provides, in pertinent part, as follows:

The magistrate shall endorse upon the search warrant the hour, date, and name of the officer to whom the warrant was delivered for execution; and the exact copy of the search warrant and the endorsement thereon shall be admissible evidence. Failure of the magistrate . . . to endorse thereon the date and time of issuance and the name of the officer to whom issued . . . shall make any search conducted under said search warrant an illegal search and any seizure thereunder an illegal seizure.

Tenn. R. Crim. P. 41(c) (2004).<sup>1</sup> Our supreme court has observed that

Rule 41(c) is designed to prevent improper searches and facilitate judicial review of whether a search was executed within the scope of the warrant. The rule achieves its goals in that a written record of the specifics of the search stifles the ever-present temptation for an officer to conduct a search and justify it later.

*State v. Coffee*, 54 S.W.3d 231, 233-34 (Tenn. 2001); *see also Talley v. State*, 345 S.W.2d 867, 869 (Tenn. 1961) (discussing predecessor statute and stating that its requirements were intended “to secure the citizen against carelessness and abuse in the issuance and execution of search warrants”). The court has also recognized that “in adopting Rule 41(c), Tennessee, ‘like other states, has imposed requirements that go beyond constitutional requirements.’” *State v. Davis*, 185 S.W.3d 338, 346 (Tenn. 2006) (quoting *State v. Stepherson*, 15 S.W.3d 898, 902 (Tenn. Crim. App. 1999) (citing LaFave, *Search & Seizure*, § 4.12 (3d ed. 1996))). Rule 41 has been “interpreted . . . strictly; the language is plain and the requirements are mandatory.” *State v. Bobadilla*, 181 S.W.3d 641, 645 (Tenn. 2005). “Under the explicit provisions of Rule 41(c) such failure [to follow the endorsement requirements] ‘shall make any search conducted under said search warrant an illegal search and any seizure thereunder an illegal seizure.’” *Id.* at 645 (quoting Tenn. R. Crim. P. 41(c) (2004)).

In *Bobadilla*, the supreme court confirmed that the primary purpose of the endorsement requirements is “to ensure that if a search warrant is executed prior to its issuance, such discrepancy will be apparent on the face of the warrant.” *Id.* The court concluded that the search warrant at issue in *Bobadilla*, which did not contain any endorsement of the hour of its issuance, was invalid under the terms of Rule 41 and the resulting search and seizure of property illegal. *Id.* Here, although the search warrant contains the endorsement of an hour, 11:25, it does not contain the endorsement of *the hour* of its issuance. The time 11:25 occurs twice in a 24-hour day. Because there was no designation of whether the warrant was issued at 11:25 a.m. or 11:25 p.m., the warrant fails to comply with the mandatory requirement of Rule 41 that it be endorsed with the hour of its issuance. Because of this deficiency, the warrant was invalid, and the resulting search was illegal. Consequently, the evidence seized pursuant to the warrant must be suppressed.

We take a moment to note that the warrant in this case satisfies the constitutional requirements of probable cause and particularity. Moreover, the evidence adduced at the hearing on the motion to suppress established that the warrant was in fact issued before it was executed. Nevertheless, because our supreme court has held that the requirements of Rule 41 for issuance of the warrant are mandatory and strictly interpreted, *see id.* at 645, the judgment of the trial court must be reversed. Because the appeal was predicated upon Rule 37(b)(2)(A), which requires that the

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<sup>1</sup>Rule 41 was amended in 2006. Although the rule was reformatted, there were no substantive changes. The current version of the rule provides, “The magistrate shall endorse on the search warrant the hour, date, and name of the officer to whom the warrant was delivered for execution.” Tenn. R. Crim. P. 41(c)(2)(D). Subsection (g) commands suppression of the evidence when a search warrant fails to comply with this directive. Tenn. R. Crim. P. 41(g)(5)(B).

certified question must be dispositive of the case, the underlying charges must be dismissed. *See State v. Kevon Fly*, No. E2006-01979-CCA-R3-CD (Tenn. Crim. App., Knoxville, July 26, 2007).

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JAMES CURWOOD WITT, JR., JUDGE